

Notice of Allowability	Application No.	Applicant(s)	
	09/586,106	WRIGHT ET AL.	
	Examiner	Art Unit	
	David Guzo	1636	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendment filed 10/29/03.
2. ☒ The allowed claim(s) is/are 15-18, 21-23, 25 and 28-34.
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
 - * Certified copies not received: _____.
5. ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 - (a) ☐ The translation of the foreign language provisional application has been received.
6. ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. **THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

7. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
8. ☐ CORRECTED DRAWINGS must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No. _____.
 - (b) ☐ including changes required by the proposed drawing correction filed _____, which has been approved by the Examiner.
 - (c) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No. _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet.

9. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|--|---|
| 1 <input type="checkbox"/> Notice of References Cited (PTO-892) | 2 <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3 <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 4 <input checked="" type="checkbox"/> Interview Summary (PTO-413), Paper No. <u>1</u> . |
| 5 <input type="checkbox"/> Information Disclosure Statements (PTO-1449), Paper No. _____. | 6 <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 7 <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit of Biological Material | 8 <input type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9 <input type="checkbox"/> Other _____. |

Examiner's Amendment

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

The application has been amended as follows:

In the **Specification**:

On Page 1, first paragraph, of the Specification, substitute the following
Continuing Data for the existing Continuing Data:

This application is a continuation in part to U.S. Patent Application Serial Number 09/322,478, now U.S. Patent 6,331,662, which application was filed May 28, 1999, which application claimed priority to U.S. Provisional Patent Application Serial Number 60/087125, filed May 29, 1998.

The above amendment was necessary to update the status of the parent application.

It is noted that applicants have filed a CIP of the instant application, said application (10/395,607) claims subject matter in common with the instant application. Claim 1 of the '607 application recites an isolated nucleic acid having at least 60% identity with nucleotide sequences which include the instantly claimed SEQ ID NO:62 as

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well as cells transformed with said sequence. The subject matter of claim 1 of the '607 application falls entirely within the scope of claim 15 of the instant application, that is, the SEQ ID NO:62 of the '607 application is the same as SEQ ID NO:62 recited in the instant claims. Put another way, claim 1 in the '607 application would anticipate claim 15 of the instant application. Therefore, a provisional Obviousness Type Double Patenting rejection against claims 15-16, 28-29 and 34 would be appropriate; however, since said provisional rejection would be the only remaining rejection, it is withdrawn and the application passed to issue (See MPEP 804). A provisional Obviousness Type Double Patenting rejection will be made in the '607 application and said rejection will be converted into a regular Obviousness Type Double Patenting rejection upon issuance of the instant application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Guzo, Ph.D., whose telephone number is (703) 308-1906. The examiner can normally be reached on Monday-Thursday from 8:00 AM to 5:30 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Irem Yucel, Ph.D., can be reached on (703) 305-1998. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

David Guzo
November 5, 2003


DAVID GUZO
PRIMARY EXAMINER